

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of J. R. M. LYONS, Minor.

UNPUBLISHED  
September 10, 2015

No. 326260  
Wayne Circuit Court  
Family Division  
LC No. 13-511328-NA

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Before: MURRAY, P.J., and METER and OWENS, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to a minor child under MCL 712A.19b(3)(a)(ii), (c)(i), (g), (h), and (j). We affirm.

In termination of parental rights proceedings, this Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 360; 612 NW2d 407 (2000).

We agree with the parties that the evidence did not support termination of respondent's parental rights under MCL 712A.19b(3)(a)(ii). However, because only one statutory ground need be established to justify termination and there was clear and convincing evidence to support termination of respondent's parental rights under the remaining statutory provisions, any error regarding MCL 712A.19b(3)(a)(ii) was harmless. See *Trejo*, 462 Mich at 360

Termination in this case occurred more than 182 days after the initial dispositional order. The case came into the court's jurisdiction because respondent left the child with an acquaintance without proper supervision, clothing, food, or medicine for a possible ear infection, and she did not come back for the child, who was taken to the police department. In addition, respondent did not have a suitable home, and respondent's older child had been placed in a guardianship before this case began because "[s]he wasn't able to take care of him." At the adjudication trial, petitioner also stated that respondent had a substance abuse problem.

Following the removal of the child at issue in the present case, respondent failed to attend court hearings for several months. She attended the next three hearings and then was incarcerated in May 2014. Respondent had not maintained consistent contact with petitioner. Throughout this case, respondent had no stable, suitable housing and did not provide proof of a legal source of income. The facts do not support respondent's argument that she had stable

housing with her grandmother. Instead, the facts showed that respondent had moved in with a different grandmother in March 2014 and that that home had not been assessed. She only minimally complied with the treatment plan. Although she completed parenting classes, she did not demonstrate a sufficient benefit from them. She missed over half of the scheduled visitations. Her compliance with therapy was partial. Respondent had not complied with the drug screens, completing only 10 of 46 scheduled screens. A drug screen that was ordered to be taken immediately following a court hearing tested positive.

Respondent argues that the conditions that led to the adjudication had not been proven and that she had denied the allegations on the record. It is well-settled that “[o]rdinarily, an adjudication cannot be collaterally attacked following an order terminating parental rights” unless “termination occur[ed] at the initial disposition as a result of a request for termination contained in the original, or amended, petition[.]” *In re SLH*, 277 Mich App 662, 668-669; 747 NW2d 547 (2008). Instead, there must be a direct appeal of the jurisdictional decision. *Id.* at 668 n 11. The trial court’s jurisdiction cannot now be collaterally attacked.

There was clear and convincing evidence that the conditions that led to the adjudication continued to exist and there was no reasonable likelihood that they would be rectified within a reasonable time considering the child’s age. The same evidence that established that the conditions of adjudication continued to exist demonstrated that respondent had not provided proper care or custody for the child and there was no reasonable expectation that respondent would be able to do so within a reasonable time considering the child’s young age. MCL 712A.19b(3)(c)(i) and (g).

Respondent’s reliance on *In re Mason*, 486 Mich 142, 160-161; 782 NW2d 747 (2010), to support her argument that there was not clear and convincing evidence to support termination under MCL 712A.19b(3)(h) is misplaced. In *Mason*, 486 Mich at 160-161, the Court set forth three conditions that must be met to support termination under § (3)(h). Our review of the evidence shows that each of the conditions was met. First, respondent was imprisoned for such a period that the child would be deprived of a normal home for a period exceeding two years. Respondent’s earliest out date was February 3, 2017, over two years from the date of the termination hearing, and there was no guarantee that she would be released at that time. Her latest release date was February 3, 2029. Whenever respondent was released, she would still have to obtain housing and employment and participate and benefit from services before she would be permitted to have even unsupervised visitation. Second, respondent had not provided for the child’s proper care and custody before imprisonment and had done nothing to provide for the child’s care and custody while imprisoned. The child had been placed with her paternal aunt through petitioner’s efforts, not respondent’s. Third, based on the evidence, there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time.

The *Mason* Court held that “a parent’s past failure to provide care *because of his incarceration* also is not decisive.” *Id.* at 161 (emphasis added). However, *Mason* did not preclude consideration of a parent’s past failure to provide care *when that parent was not incarcerated*. A respondent’s conduct and accomplishments during the time when she was required to comply with a treatment plan clearly may be evaluated to determine whether the respondent made sufficient efforts toward reunification. Here, respondent made insufficient

efforts to provide care for her child before she was incarcerated. Her failure to comply with the treatment plan is evidence of her failure to provide proper care and custody for the child. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Her participation in a few of the services offered by the prison was not sufficient to demonstrate that there was a reasonable expectation that she would be able to provide proper care and custody within a reasonable time. Accordingly, we find that there was clear and convincing evidence to support termination under MCL 712A.19b(3)(h).

We also find clear and convincing evidence to support termination of respondent's parental rights under MCL 712A.19b(3)(j). Respondent had placed the child at risk of harm while in her care. Although the child seemed to be ill, respondent left her with an acquaintance without diapers, food, or medicine. The fact that the person turned the child over to the police was evidence that respondent did not leave her child with someone who would watch over and care for her. The evidence showed that respondent did not make sufficient efforts toward reunification. She did not consistently visit her child and, as a result, at the age of almost three, the child was more strongly bonded to her foster mother. Respondent did not have a suitable home and committed a crime that resulted in her incarceration.

Finally, the trial court also did not clearly err in determining that termination of respondent's parental rights was in the best interests of the child. MCL 712A.19b(5); *Trejo*, 462 Mich at 356-367. Respondent contends that the trial court clearly erred because it failed to consider a guardianship for the child, as had been done with her older child. The record shows that the question whether guardianship would be in the child's best interests was addressed in court. Petitioner informed the court that, in general, the agency considered a guardianship only when the child was older and had already established a strong bond with the parent. Here, the child had been placed with her paternal aunt when the child was approximately one year old. At the termination hearing, she was almost aged three. The testimony showed that the child had a stronger bond with the paternal aunt than with respondent. Respondent had never provided proper care or custody for her children, she never had employment or suitable housing, and she never adequately complied with her treatment plan. Instead of working toward reunification, she engaged in criminal behavior and was convicted and incarcerated. Even if she were released at her earliest release date in 2017, she would need to obtain a legal source of income and suitable housing, comply with a treatment plan, and demonstrate a commitment to making the child her highest priority—accomplishments she had never achieved in the past. Given her history, there was no reasonable likelihood that she would work diligently toward reunification or be able to achieve these goals upon her release from prison.

The child was in a loving home with her paternal aunt, who wanted to adopt her. The child needs permanency and stability. The trial court found that it would not be in the child's best interests to set up a guardianship. The trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Christopher M. Murray  
/s/ Patrick M. Meter  
/s/ Donald S. Owens